

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7805

BILL NUMBER: SB 385

NOTE PREPARED: Jan 14, 2003

BILL AMENDED:

SUBJECT: School students and employees.

FIRST AUTHOR: Sen. Bray

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill has the following provisions:

(A) Enables a school corporation to obtain limited and national criminal history checks for all employees rather than only for new employees.

(B) Makes conforming changes relating to the policies a school may adopt concerning criminal history checks.

(C) Requires a prosecuting attorney to notify the state superintendent of public instruction and the employer when a licensed school employee is convicted of certain offenses.

(D) Makes changes in the grounds for which teachers' licenses may be revoked and contracts may be canceled.

(E) Requires a governmental entity to pay a judgment (except for punitive damages) of a claim or suit against an employee when the act or omission causing the loss is within the scope of the employee's employment and the governmental entity has the opportunity to defend the employee. Requires a governmental entity to pay a judgment for punitive damages, compromise, or settlement against an employee when: (1) the act or omission causing the loss is within the scope of the employee's employment; (2) the governmental entity has the opportunity to defend the employee; and (3) the compromise or settlement is in the best interest of the governmental entity. Provides that a governmental entity or employee acting in the scope of employment is not liable if a loss results from an injury to a person assigned to a pretrial conditional release program.

(F) Provides civil immunity for making certain reports concerning a teacher.

(G) Changes the law concerning seduction of a child at least 16 years of age to add certain actions that constitute the offense and to expand coverage to all employees of a child's school.

Effective Date: July 1, 2003.

Explanation of State Expenditures: (A) & (B) Summary: Under the bill, the Indiana State Police may have increased expenditures to process additional criminal background checks. The impact would be dependent on local action of school corporations required to adopt a policy for background checks for all certified and non-certified school corporation employees. School boards would also have the option to require background checks for applicants and hired individuals.

(D) *Summary:* The Indiana Professional Standards Board could have increased expenditures to cover printing and mailing notices for a hearing. If additional revocation hearings were to occur, the Board could include these hearings during a normally scheduled meeting. Through October of 2002, the Board has met eight times for the year. The Board met seven times during CY 2001.

Background: After a complaint against a license holder is filed by the Department of Education, an administrative law judge presides over an adjudication proceeding where the individual with the license may present their case. Once the judge has ruled, the Board would hold a meeting to determine if the ruling of the judge will be upheld.

(E) *Summary:* The provisions of this bill would require the state to be liable for punitive damages awarded in a judgment from a claim or suit in tort against a state employee while acting within his/her scope of employment. This bill has the potential of impacting the Attorney General's Office and other state agencies if it causes these affected agencies to spend time and resources defending a tort claim or suit. If a judgement is placed against the state, a claimant may be paid monetary damages, reasonable costs, and attorney fees.

Background: The Office of the Attorney General reports the amount of damages paid as a result of tort claims submitted and tort claim lawsuits filed against the State and by plaintiffs in tort and civil rights litigation between CY 1995 and CY 2001 as follows:

Calendar Year	Damages Paid
1996	\$5,742,977
1997	\$3,438,230
1998	\$2,935,075
1999	\$5,052,346
2000	\$9,362,912
2001	\$3,312,183

(G) *Summary:* If more convictions of child seduction (Class D felony) occur due to this provision, the state would incur an increase in expenditure to house convicted individuals sentenced to a prison term. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$25,087 in FY 2001. Individual facility expenditures ranged from \$18,520 to \$54,465. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with

no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: (A) & (B) Summary: If additional background checks occur under the bill, revenue would increase. Approximately \$1.75 M in state revenue was collected from background checks in FY 2001. Revenue from background checks is deposited into the state General Fund.

Background: Currently the following civilian background checks are performed or processed by the Indiana State Police:

Type of Check	Fee
Limited Criminal History	\$7
ID Billing	\$7
Review/Challenge (fingerprint check)	\$10
Non-Profit	\$0
Full Statewide (includes fingerprints)	\$10
National Volunteer Check (42 U.S.C. 5119a & IC 5-2-5-15)	\$28 (\$10 to State of Indiana, \$18 to Federal Government)
National Employment Check	\$34 (\$10 to State of Indiana, \$24 to Federal Government)

The following table shows the number of civilian background checks processed over the last three years:

Year	Number of Background Checks
CY 2001	265,278
CY 2000	262,661
CY 1999	215,426

Currently, breakdowns are not available for the number of teacher applicants or school volunteers that were processed for a background check.

(D) Summary: If more revocations of teacher licenses are carried out as a result of the bill, fewer license renewal fees would be collected. The reduction to state revenue would be minimal. Effective January 1, 2002, teacher license fees are \$35. In FY 2002 the Board collected \$442,335 in teacher license revenue. All fees from teacher licenses are deposited into the state General Fund.

Background: Current law allows for the permanent revocation of a teacher license for the following offenses (IC 20-6.1-3-7(c)):

Offense	Classification
Rape	Class B felony (Class A if with deadly force/weapon)
Criminal deviate conduct	Class B felony (Class A if with deadly force/weapon)
Child molesting	Class C felony (Class A if with deadly force/weapon)
Child exploitation	Class D felony (Class C if it is committed by using a computer network)
Vicarious sexual gratification	Class D felony (Class C if child involved in the offense is under the age of 14; Class B if with deadly force/weapon or use of drugs to induce)
Child solicitation	Class D felony (Class C if it is committed by using a computer network)
Child seduction	Class D felony (Class C if deadly force/weapon or use of drugs to induce)
Sexual misconduct with a minor	Class C felony (Class B if offender is 21 years or older; Class A if with deadly force/weapon or use of drugs to induce)
Incest	Class C felony. (Class B if victim is less than 16 years of age.)

Revocation Data: The following table illustrates the number of teacher license revocations and comments on the reason.

Year	Number of Revocations	Comments
CY 2002	14*	At least five of the revocations were for an offense under section 7(c) in the previous table.
CY 2001	10	At least two of the revocations were for an offense under section 7(c) in the above table.
CY 2000	6	Five of the revocations were for sexual misconduct with a minor (section 7(c) violation listed above). The remaining revocation was for a section 7(a) violation: immorality, misconduct in office, incompetency, willful neglect of duty.
CY 1999	7	Two of these revocations were for at least one of the offenses listed above (IC 20-6.1-3-7(c)). Two other revocations were due to immorality as listed in current law under (IC 20-6.1-3-7(a)).

*Through October 2002

FTE: School year 2001-2002 FTE for teachers was 59,559.

(E) Court Fee Revenue: If additional civil actions occur, revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed. 70% of the filing fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

(F) Summary: If fewer civil actions occur under the bill, the state General Fund would receive less revenue if fewer court fees are collected. Under current law, a civil filing fee of \$100 is assessed when a civil case is filed. 70% of the filing fee is deposited in the state General Fund if the case is filed in a court of record

or 55% if the case is filed in a city or town court.

(G) Summary: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: **(A) & (B) Summary:** The impact of this provision would depend on the local actions of school corporations. Currently, payment by either a teacher applicant or a school corporation for a criminal background check on the applicant depends on the payment policy of the school corporation. At least one school corporation splits the cost of payment with the applicant for certain background checks.

(C) Summary: Under the bill, formal notification of a conviction of a licensed school employee is to be made in writing. The prosecuting attorney would experience a slight increase in expenditure for postage and printing of notices.

(D) Summary: If additional semipermanent or permanent teachers were to have their contract terminated under this provision, the school board would not have to pay the remaining amount on the terminated teacher's contract. The money earmarked for the payment of a dismissed teacher's contract would be retained in the school corporation's general fund. The school corporation could use these funds for the hiring of a replacement teacher.

(E) Summary: This bill could have an administrative impact on the caseloads of trial or city and town courts if additional civil actions are filed. The operating expenses of the trial courts are paid by the county general fund. The expenses of the city and town courts are paid by the general fund of the city or town in which the court is located.

(G) Summary: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: **(F) Summary:** If fewer civil actions occur, local governments would receive less revenue. Under current law, the county general fund receives 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

(G) Summary: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Indiana Department of Education; Professional Standards Board; Department of Correction; Office of the Attorney General.

Local Agencies Affected: School corporations, prosecuting attorneys, courts.

Information Sources: Philip McGovern, Indiana Professional Standards Board, (317) 232-9018; Indiana Professional Standards Board website: <http://www.in.gov/psb/board>; Kevin McDowell, Department of Education, (317) 232-6647; Indiana State Police; Rod Elsemer, Indiana State Teacher's Association, (317) 263-3400; Office of the Auditor of State, Budget Revenue Trial Balance, June 30, 2001; DOE ORACLE and SAS databases; Department of Correction, Indiana Sheriffs Association.

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